

UNITED STATES DISTRICT COURT  
for the  
Northern District of New York

SHIRLEY MCFEE,	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Civil Action No. 1:14-CV-1314 (GLS/CFH)
	)	
UNITED STATES OF AMERICA,	)	Jury Trial Demanded
THE INSTITUTE FOR FAMILY	)	
HEALTH, WILLIAM BAKEY, and	)	
WALTER WOODLEY, M.D.	)	
	)	
<i>Defendants.</i>	)	

**COMPLAINT**

Plaintiff, by her attorneys, WISELL & McGEE L.L.P, complaining of the defendants, alleges:

FIRST: This action arises under the Federal Tort Claims Act ("FTCA")

SECOND: That at all times herein mentioned, plaintiff, SHIRLEY MCFEE, was and is a resident of the County of Ulster, residing at 29 Golf Terrace, Kingston, New York.

THIRD: Upon information and belief, that at all times hereinafter mentioned THE INSTITUTE FOR FAMILY HEALTH was and is federally deemed healthcare delivery provider that received funding from the United States Department of Health and Human Services.

FOURTH: Upon information and belief, that at all times hereinafter mentioned, WILLIAM BAKEY, was a physicians assistant in the employ of defendant, THE INSTITUTE FOR FAMILY HEALTH.

FIFTH: That at all times hereinafter mentioned, the defendant, WILLIAM BAKEY, was a physician's assistant practicing medicine at THE INSTITUTE FOR FAMILY HEALTH, and at all times hereinafter mentioned was acting in the course and

scope of his employment thereat.

SIXTH: That at all times hereinafter mentioned, defendant WALTER WOODLEY, M.D., was a physician in the employ of THE INSTITUTE FOR FAMILY HEALTH.

SEVENTH: That at all times hereinafter mentioned, the defendant, WALTER WOODLEY, M.D., was a physician practicing medicine at THE INSTITUTE FOR FAMILY HEALTH and at all times hereinafter mentioned was acting in the course and scope of his employment thereat.

EIGHTH: That at all times hereinafter mentioned and specifically on April 9, 2013, the defendant, WALTER WOODLEY, M.D., supervised defendant WILLIAM BAKEY.

NINTH: That at all times hereinafter mentioned, the defendant, THE INSTITUTE FOR FAMILY HEALTH, held itself out to the general public as providing medical, nursing and health care treatment to patients in accordance with the good and accepted standards and practices of medicine and public health, and in providing a medical staff that was skillful, careful and competent to perform medical services thereat.

TENTH: That on April 9, 2013, defendants, WALTER WOODLEY, M.D., WILLIAM BAKEY and THE INSTITUTE FOR FAMILY HEALTH, received plaintiff, SHIRLEY MCFEE, as a patient for the purpose of conducting a medical examination for commercial driver fitness determination.

ELEVENTH: That on April 9, 2013, defendants, WALTER WOODLEY, M.D., WILLIAM BAKEY and THE INSTITUTE FOR FAMILY HEALTH, accepted plaintiff as a patient for the purpose of conducting a medical examination for commercial driver fitness determination.

TWELFTH: That on April 9, 2013 the defendants, WALTER WOODLEY, M.D., WILLIAM BAKEY, M.D., and THE INSTITUTE FOR FAMILY HEALTH, conducted a medical examination for commercial driver fitness determination

on plaintiff, SHIRLEY MCFEE.

THIRTEENTH: Prior to commencement of this action, the plaintiff duly complied with all the conditions precedent to bringing this action in accordance with 28 USC §§ 2401, 2675.

FOURTEENTH: On January 10, 2014, plaintiff duly presented, served, and filed a Claim for Damage, Injury, or Death with the United States Department of Health and Human Services, which was within the time frame established by law.

FIFTEENTH: That on January 23, 2014, the Department of Health & Human Services acknowledged receipt of the claim.

SIXTEENTH: Since six (6) months have passed since the filing of the administrative claim and no response has been received from the Department of Health & Human Services, plaintiff's claim has been deemed denied.

SEVENTEENTH: This action is being commenced more than six (6) months after the filing of the administrative claim, which has been deemed denied, and within two (2) years after the right of action first accrued.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST**  
**WILLIAM BAKEY**

EIGHTEENTH: Plaintiff repeats, realleges and reiterates each and every allegation contained in all previous paragraphs with the same force and effect as if fully set forth at length herein.

NINETEENTH: That defendant, WILLIAM BAKEY, failed to render proper medical care to the plaintiff, SHIRLEY MCFEE.

TWENTIETH: That defendant, WILLIAM BAKEY failed to render proper medical care to plaintiff, SHIRLEY MCFEE, in that he was negligent, careless, reckless and departed from proper medical practices in that his actions constituted malpractice.

TWENTY-FIRST: That defendant, WILLIAM BAKEY was negligent,

careless, reckless and departed from proper medical practices and his actions constituted malpractice in that he: failed to take a complete and proper history; failed to properly heed the plaintiff's signs, symptoms and complaints; failed to recognize the plaintiff's clinical presentation and complaints; failed to properly examine the plaintiff; failed to perform a proper physical exam on plaintiff given her prior medical history; negligently performed a physical exam on plaintiff's left hand on April 9, 2013; negligently caused plaintiff to suffer a re-injury to her left thumb and hand; failed to provide proper medical treatment to the plaintiff; failed to properly examine and appropriately treat the plaintiff in accordance with appropriate policies and protocols; failed to timely render proper medical and surgical care; failed, neglected and omitted to exercise, use and employ that degree of knowledge, skill, care and diligence commonly and ordinarily possessed by and required of physician assistants in the locality where the defendant practiced and was located as aforesaid; performed various services in connection with the care and treatment of this plaintiff without proper and/or adequate personnel, supervision and assistance.

TWENTY-SECOND: That all of the aforesaid acts of medical negligence of defendant WILLIAM BAKEY occurred without any negligence on the part of the plaintiff contributing thereto.

TWENTY-THIRD: That solely by reason of the negligence of defendant WILLIAM BAKEY, plaintiff, SHIRLEY MCFEE, was caused to suffer serious and severe permanent personal injuries, emotional distress, loss of enjoyment of life, and was otherwise injured and damaged.

TWENTY-FOURTH: That as a result of the foregoing, plaintiff demands judgment against defendant WILLIAM BAKEY in an amount that exceeds the jurisdictional sum of all lower courts.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST  
WALTER WOODLEY, M.D.**

TWENTY-FIFTH: Plaintiff repeats, realleges and reiterates each and every allegation contained in all previous paragraphs with the same force and effect as if fully set forth at length herein.

TWENTY-SIXTH: That this defendant failed to render proper medical care and treatment to the plaintiff, SHIRLEY MCFEE.

TWENTY-SEVENTH: That this defendant failed to render proper medical care and treatment to plaintiff, SHIRLEY MCFEE, in that he was negligent, careless, reckless and departed from proper medical practices in that his actions constituted malpractice.

TWENTY-EIGHTH: That defendant WALTER WOODLEY, M.D. was negligent in that he failed to properly supervise defendant, WILLIAM BAKEY.

TWENTY-NINTH: That all of the aforesaid medical negligence of the defendants occurred without any negligence on the part of the plaintiff contributing thereto.

THIRTIETH: That solely by reason of the negligence of this defendant, plaintiff was caused to suffer serious and severe permanent personal injuries, emotional distress, loss of enjoyment of life, and was otherwise injured and damaged.

THIRTY-FIRST: That as a result of the foregoing, plaintiff demands judgment against this defendant in an amount that exceeds the jurisdictional sum of all lower courts.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST  
THE INSTITUTE FOR FAMILY HEALTH**

THIRTY-SECOND: Plaintiff repeats, realleges and reiterates each and every allegation contained in all previous paragraphs with the same force and effect as if fully set forth at length herein.

THIRTY-THIRD: That defendant THE INSTITUTE FOR FAMILY HEALTH was negligent in that they failed to supervise their employee, WILLAM BAKEY.

THIRTY-FOURTH: That defendant THE INSTITUTE FOR FAMILY HEALTH was negligent in that they failed to supervise their employee, WALTER WOODLEY, M.D.

THIRTY-FIFTH: That defendant, THE INSTITUTE FOR FAMILY HEALTH is vicariously liable to the plaintiff in that the acts of medical negligence by WILLIAM BAKEY occurred while he was in the course and scope of his employment with THE INSTITUTE FOR FAMILY HEALTH.

THIRTY-SIXTH: That defendant, THE INSTITUTE FOR FAMILY HEALTH is vicariously liable to the plaintiff in that the acts of medical negligence by WALTER WOODLEY, M.D. occurred while he was in the course and scope of his employment with THE INSTITUTE FOR FAMILY HEALTH.

THIRTY-SEVENTH: That all of the aforesaid acts of negligence by defendant THE INSTITUTE FOR FAMILY HEALTH occurred without any negligence on the part of the plaintiff contributing thereto.

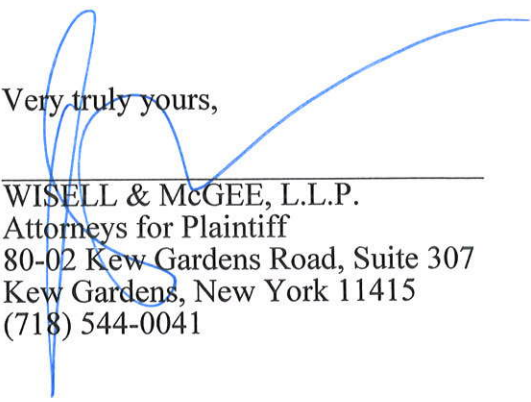
THIRTY-EIGHTH: That solely by reason of the negligence of defendant, THE INSTITUTE FOR FAMILY HEALTH plaintiff, SHIRLEY MCFEE, suffered serious and severe permanent personal injuries, loss of enjoyment of life, and was otherwise injured and damaged.

THIRTY-NINTH: That as a result of the foregoing, plaintiff demands Judgment against the defendants in an amount that exceeds the jurisdictional sum of all lower courts.

WHEREFORE, plaintiff demand judgment against the defendants on the Cause of Action for a sum of money that exceeds the jurisdictional limits of the lower courts, together with interest, costs and disbursements of this action.

Dated: Kew Gardens, New York  
September 29, 2014

Very truly yours,



---

WISELL & MCGEE, L.L.P.  
Attorneys for Plaintiff  
80-02 Kew Gardens Road, Suite 307  
Kew Gardens, New York 11415  
(718) 544-0041

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK**

**Civil Action No:**

**SHIRLEY MCFEE,**

**Plaintiff,**

**-against-**

**UNITED STATES OF AMERICA,  
THE INSTITUTE FOR FAMILY  
HEALTH, WILLIAM BAKEY, and  
WALTER WOODLEY, M.D.,**

**Defendants.**

---

**COMPLAINT**

---

**WISELL & McGEE, L.L.P.**  
**Attorneys for Plaintiff**  
**80-02 Kew Gardens Road, Suite 307**  
**Kew Gardens, New York 11415**  
**718-544-0041**

**TO:**

---

**Service of a copy of the within is hereby admitted.**

**Dated:**

---

**PLEASE TAKE NOTICE** that pursuant to CPLR 2103(b)(5),  
**WISELL & McGEE, L.L.P.** does not consent to service of any  
papers upon it by electronic means (facsimile).  
**WISELL & McGEE, L.L.P.**  
**80-02 Kew Gardens Road, Suite 307, Kew Gardens, New York 11415**